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10-15-2010

Icanovic v. State Clerk's Record Dckt. 38477

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IN THE SUPREME COURT OF THE STATE OF IDAHO

HASAN ICANOVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 38477

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE MIKE WETHERELL

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Hasan Icanovic, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
10/15/2010	CHGA	CCNELSRF	Judge Change: Adminstrative
	PETN	CCNELSRF	Petition for Post Conviction Relief
	AFFD	CCNELSRF	Affidavit of Hasan Icanovic in Support of Petition for Post Conviction Relief
	CERT	CCNELSRF	Certificate Of Mailing
10/18/2010	PROS	PRPETZDN	Prosecutor assigned Tessie Buttram
10/22/2010	MOTN	DCOATMAD	Motion
11/1/2010	ORDR	DCOATMAD	Order Releasing PSI
11/2/2010	NOTC	DCOATMAD	Notice Of Intent to Summarily Dismiss Petition for Post Conviction Relief
11/24/2010	MOTN	MCBIEHKJ	Motion for Waiver of Attorney Client Privilege
11/29/2010	ORDR	DCOATMAD	Order for Waiver of Attorney/Client Privilege
12/2/2010	RSPS	CCRANDJD	Response to Notice of Intent to Dismiss Petition for Post Conviction Relief
12/8/2010	HRSC	DCOATMAD	Hearing Scheduled (Post Conviction Relief 01/19/2011 10:00 AM)
	ORDR	DCOATMAD	Order to Transport 1/19/11 at 10:00
12/21/2010	MOTN	CCLATICJ	Motion to Extend Time
12/22/2010	ORDR	DCOATMAD	Order to Extend Time
1/19/2011	TRAN	DCOATMAD	Transcript of Guilty Plea Filed -- June 25, 2009
	DCHH	DCOATMAD	Hearing result for Post Conviction Relief held on 01/19/2011 10:00 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: less than 50 pgs
	CDIS	DCOATMAD	Ct dismissed case -- No Relief Granted -- Ruled from the Bench -- Civil Disposition entered for: State Of Idaho, Other Party; Icanovic, Hasan, Subject. Filing date: 1/19/2011
	STAT	DCOATMAD	STATUS CHANGED: Closed
1/21/2011	APSC	CCLUNDMJ	Appealed To The Supreme Court
1/25/2011	ORDR	DCOATMAD	Order Appointing State Appellate PD on Appeal
2/4/2011	JDMT	DCOATMAD	Final Judgment of Dismissal Following Hearing

OCT 15 2019

J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Petitioner

MEGAN HERRETT, ISB #7003
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

MIKE WETHERELL

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CVPE10 20419

**PETITION FOR POST
CONVICTION RELIEF**

COMES NOW, HASAN ICANOVIC, Petitioner above-named, who pursuant to I.C. § 19-4901 and I.C.R. 57, brings before this Court this Petition for Post Conviction Relief and accompanying affidavit as contained hereinafter.

I. THE PETITIONER ALLEGES:

1) The Petitioner is currently housed at the Utah County Jail, 3075 Main, Spanish Fork, UT, pursuant to an Immigration and Customs Enforcement (ICE) detainer.

2) Attorney Jared Martens represented the Petitioner during the course of the criminal proceedings in Ada County case number CR-FE-2009-0008538.

3) On September 2, 2009, the Petitioner was sentenced in Ada County case number CR-FE-2009-0008538 by the Honorable Michael Wetherell of the District Court of the Fourth

Judicial District of the state of Idaho, in and for the county of Ada, on one count of Domestic Battery, which is a felony violation of Idaho Code § 18-918(3)(a), to an aggregate term of eight (8) years with the first three (3) years fixed.

- 4) On September 2, 2009, the Court retained jurisdiction.
- 5) On February 18, 2010, the Petitioner was placed on probation for ten (10) years.
- 6) No appeal was taken from the judgment of conviction.
- 7) No motions for reduction of sentence were filed.

II. PROCEEDINGS

1) Subsequent to being sentenced, an ICE detainer was placed on the Petitioner and he was transported to Utah for further deportation proceedings.

2) On April 28, 2010, the Court received a letter from Defendant in which he requests the Court appoint counsel.

3) On May 3, 2010, the Court appointed the Ada County Public Defender's office to represent the Petitioner.

III. CLAIMS

1) Attorney Jared Martens' representation fell below the minimum level of competent assistance and provided ineffective assistance of counsel to the Petitioner during the course of the aforesaid criminal proceedings in the following ways:

- a) When questioned specifically by the Petitioner if his guilty plea and/or conviction would result in him being deported to Bosnia, Mr. Martens advised the Petitioner it would not.
- b) When questioned specifically by the Petitioner if his guilty plea and/or conviction would result in him losing his ability to apply for United States citizenship, Mr. Martens advised the Petitioner that it would not.


2) The Petitioner's guilty plea was not made knowingly, intelligently, and voluntarily.

3) That, pursuant to Idaho Code § 19-4901(1)(1), Petitioner was denied the effective assistance of counsel required by the Sixth Amendment to the United States Constitution and Article I, section 13, of the Idaho Constitution, as described above. In support, Petitioner relies upon the attached affidavit. This affidavit clearly indicates that Mr. Martens was ineffective in his representation, thereby prejudicing Petitioner, and ultimately resulting in his conviction and subsequent sentence.

- 1) Petitioner requests this Court enter an ORDER vacating the pleas of guilty and the judgment of conviction, and ultimately grant him a new trial, or;
- 2) For any such further relief as the Court deems just and reasonable.

- 1) Petitioner requests this Court enter an ORDER vacating the pleas of guilty and the judgment of conviction, and ultimately grant him a new trial, or;
- 2) For any such further relief as the Court deems just and reasonable.


DATED, this 9 day of October 2010.


MEGAN HERRETT
Attorney for Petitioner

CERTIFICATE OF VERIFICATION

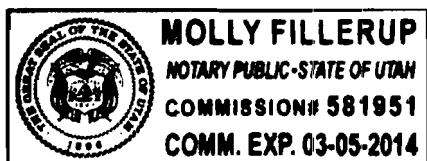
I, HASAN ICANOVIC, the petitioner named in the above action, first being duly sworn (affirmed) upon my oath, depose and say that I have read the foregoing amended petition and the documents, affidavits, and exhibits attached to this amended petition are hereby sworn to be true and correct to the best of my information, knowledge, and belief.

DATED, this 9 day of October 2010.


HASAN ICANOVIC
Petitioner

STATE OF UTAH)
)**ss.**
County of Utah)

I, Molly Fillenp, a notary public, do hereby certify that on this 9 day of October 2010, personally appeared before me Hasan Icanovic who, being by me first duly sworn, declared that he is the petitioner named in the above action, that he signed the foregoing document as the petitioner in the above action, and that the statements therein contained are true and correct to the best of his information, knowledge, and belief.

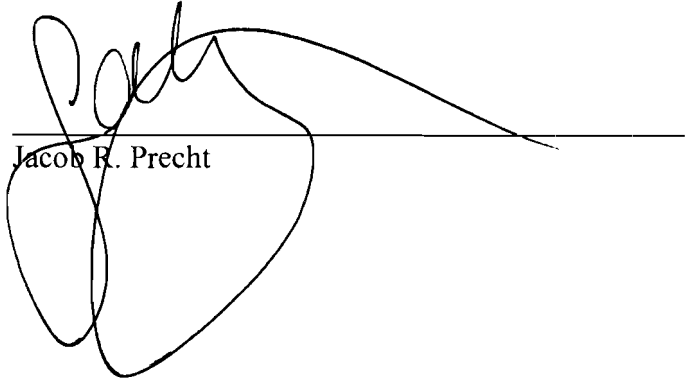


Notary Public

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Thursday, October 14, 2010, I mailed (served) a true and correct copy of the within instrument to:

**Ada County Prosecutor's Office
Interdepartmental Mail**



Jacob R. Precht

OCT 15 2010

J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Petitioner

MEGAN HERRETT, ISB #7003
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. **CV PC 1020419**

AFFIDAVIT OF HASAN ICANOVIC IN
SUPPORT OF PETITION FOR POST
CONVICTION RELIEF

I, HASAN ICANOVIC, after being first duly sworn (affirmed) do attest to the following:

- 1) I am the Petitioner named in the above-entitled action.
- 2) I am the Defendant named in the criminal action of *State of Idaho v. Hasan Icanovic*, Ada County case number CR-FE-2009-0008538.
- 3) I am over the age of eighteen years and am of sound mind and body.
- 4) Attorney Jared Martens; in Ada County case number CR-FE-2009-0008538, *State of Idaho v. Hasan Icanovic*; represented me.
- 5) On June 25, 2009, I plead guilty to one count of Domestic Battery, a felony violation of Idaho Code § 18-918(3)(a).

6) Prior to entering my plea of guilty, I specifically asked Mr. Martens if my guilty plea and/or conviction would result in me being deported to Bosnia. Mr. Martens advised me that it would not.

7) Prior to entering my guilty plea, I specifically asked Mr. Martens if my guilty plea and/or conviction would result in me losing my ability to apply for United States citizenship. Mr. Martens advised me that it would not.

8) On September 2, 2009, I was sentenced to an aggregate term of eight (8) years with the first three (3) years fixed and the court retained jurisdiction.


9) On February 18, 2010, following completion of my retained jurisdiction, I was placed on probation for ten (10) years.

10) On February 19, 2010, I was served with an Immigration and Customs Enforcement (ICE) detainer.

11) On February 25, 2010, I was booked into the Utah County Jail, 3075 North Main, Spanish Fork, Utah, where I am currently being held on an ICE detainer.

12) But for Mr. Martens' advisement, I would not have pled guilty.

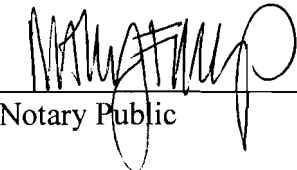
DATED, this 9 day of October 2010.



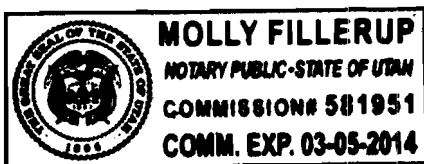
HASAN ICANOVIC
Petitioner/Affiant

STATE OF UTAH)
)ss.
County of Utah)

SUBSCRIBED and SWORN (AFFIRMED) to before me, a Notary Public, in and for the state of Idaho, county of Ada, this 9 day of October 2010.
Utah Utah



Notary Public



CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Thursday, October 14, 2010, I mailed (served) a true and correct copy of the within instrument to:

**Ada County Prosecutor's Office
Interdepartmental Mail**

Jacob R. Precht

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read 'Jacob R. Precht'.

FILED
Friday, October 15, 2010 at 11:00 AM
J. DAVID NAVARRO, CLERK OF THE COURT

BY: 

Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC, PLAINTIFF
Plaintiff(s)

vs

STATE OF IDAHO, DEFENDANT
Defendant(s)

CASE NO. CV-PC-2010-20419

CERTIFICATE OF MAILING

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the: **PETITION FOR POST CONVICITON RELIEF** as notice pursuant to Rule 77 (d) I.R.C.P. to each of the parties or attorneys of record in this cause in envelopes addressed as follows:

ADA COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION
INTERDEPARTMENTAL MAIL
CVPC1020419

MEGAN HERRETT
ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

(COPY IN FILE)

Dated: Friday, October 15, 2010

J. DAVID NAVARRO
Clerk of the Court

By: 

Deputy Clerk

NO. _____
A.M. _____ P.M. _____
FILED 3
OCT 22 2010
J. DAVID NAVAS RO. Clerk
By SCARLETT RAMIREZ
DEPUTY

ALAN E. TRIMMING
ADA COUNTY PUBLIC DEFENDER

MEGAN HERRETT
Deputy Public Defender, ISB# 7003
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

HASAN ICANOVIC,

Defendant.

Case No. CR-FE-2009-0008538
(Civil Case Ref: CV-PC-2010-20419)

MOTION TO RELEASE PSI

COMES NOW, MEGAN HERRETT of the Ada County Public Defender's Office, court-appointed counsel for HASAN ICANOVIC, and moves this Court pursuant to Idaho Criminal Rule 32 for an ORDER releasing the presentence investigation report prepared in the above-entitled case number to undersigned counsel.

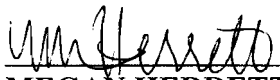
The defendant recently filed Petition for Post-Conviction Relief in case number CV-PC-2010-20419. The Ada County Public Defender's Office has been appointed to represent the

MOTION TO RELEASE PSI

000011

above-named defendant in post-conviction proceedings. To aid undersigned counsel in the post-conviction proceedings and familiarize counsel with the defendant's case, counsel respectfully requests this Court release a copy of the presentence investigation report generated in the above-entitled case number.

DATED, this 21st day of October 2010.


MEGAN HERRETT
Attorney at Law

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 21 day of October 2010, I mailed a true and correct copy of the within instrument to:

TESSIE A. BUTTRAM
Ada County Prosecutor's Office

by Interdepartmental Mail.


Jacob R. Precht

NO. _____
A.M. _____ 4/20

NOV 01 2010

J. DAVID NAVARRO, Clerk
By DIANE M. OATMAN
DEPUTY

ALAN E. TRIMMING
ADA COUNTY PUBLIC DEFENDER

RECEIVED

OCT 22 2010

ADA COUNTY CLERK

MEGAN HERRETT
Deputy Public Defender, ISB# 7003
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

HASAN ICANOVIC,

Defendant.

Case No. CR-FE-2009-0008538
(Civil Case Ref: CV-PC-2010-20419)


ORDER RELEASING PSI

This matter having come before the court upon court-appointed counsel's motion, and for good cause appearing, this Court hereby grants counsel's MOTION FOR RELEASE OF PSI.

A copy of the presentence investigation report prepared on behalf of the defendant in the above-entitled case number shall be released to MEGAN HERRETT, court-appointed counsel for the defendant in case number CV-PC-2010-20419, to aid counsel in preparation of the pending post-conviction proceedings.

Counsel is to make no copies of the report, shall not disclose the report to any other person outside the office of the Ada County Public Defender, and shall surrender said copy to this Court upon completion of the defendant's post-conviction proceedings in case number CV-PC-2010-20419. Failure to comply with any portion of Idaho Criminal Rule 32 may be deemed contempt of court and may be subject to appropriate sanctions.

SO ORDERED AND DATED, this 28th day of October 2010.



MIKE WETHERELL
District Judge

4115
NOV 02 2010J. DAVID NAVARRO, Clerk
By DIANE M. OATMAN
DEPUTYIN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,)	
	)	Case No. CV-PC-2010-0020419
Petitioner,)	
	)	NOTICE OF INTENT TO
vs.	)	SUMMARILY DISMISS
	)	PETITION FOR POST
STATE OF IDAHO,	)	CONVICTION RELIEF
)	
Respondent.)	
_____)	

On October 15, 2010, Petitioner Hasan Icanovic filed a Petition for Post-Conviction Relief asserting a claim of ineffective assistance of counsel alleging that trial counsel misrepresented to the Petitioner the potential effect of a guilty plea on his immigration status.

Background

Petitioner was charged with Attempted Strangulation, Felony, and Domestic Battery, Misdemeanor, by an Information filed on May 28, 2009. On June 25, 2009, pursuant to a negotiated plea agreement, the Petitioner entered a plea of "guilty" to the charge of Domestic Violence, Felony, and the State filed an Amended Information in open court. The Court accepted the guilty plea following an examination of the Petitioner under oath and waiver of applicable rights. On September 2, 2009, Petitioner came before

the Court for sentencing. At that time, the Court heard statements from both counsel. The Court sentenced Petitioner to a period of incarceration of eight years, with the first three years fixed, however the Court retained jurisdiction. On September 14, 2009, the United States Bureau of Homeland Security Department of Immigration and Customs provided the Petitioner and the Court a notice of detainer. On February 18, 2010, the Court suspended the sentence and placed the Defendant on probation for a period of ten years. The Petitioner is currently housed at the Utah County Jail pursuant to the Immigration and Customs Enforcement (ICE) detainer. The Petitioner did not appeal his conviction or sentence.

Standard of Review

A petition for post-conviction relief is an entirely new proceeding and is civil in nature. It is distinct from the criminal action, which led to conviction. *Stuart v. State*, 136 Idaho 490, 36 P.3d 1278, 1282 (2001); *Peltier v. State*, 119 Idaho 454, 808 P.2d 373, 375 (1991). Like a plaintiff in a civil action, the petitioner seeking post-conviction relief must bear the burden of proving the allegations upon which the petition for post-conviction relief is based by a preponderance of evidence. I.C.R. 57(c); *Grube v. State*, 134 Idaho 24, 995 P.2d 794 (2000). However, the pleadings of a post-conviction petition differ from those of a civil action, in that “[t]he application must contain much more than a short and plain statement of the claim.” *State v. Yakovic*, 145 Idaho 437, 180 P.2d 476, 482 (S. Ct. 2008) (quoting *Goodwin v. State*, 138 Idaho 269, 271, 61 P.3d 626, 628 (Ct. App 2002)). The applicant for post-conviction relief is required to make a prima facie case by presenting admissible evidence on each essential element of his or her claims. *Berg v. State*, 131 Idaho 517, 518-19, 960 P.2d 738, 739-40 (1998); I.C. § 19-4903.

The district court is vested with the discretion of making factual findings, and must rely on substantial, even if conflicting, evidence in the record. *Martinez v. State*, 125 Idaho 844, 875 P.2d 941 (Ct. App. 1994); *Holmes v. State*, 104 Idaho 312, 658 P.2d 983 (1983). “[A]n applicant’s conclusory allegations, unsubstantiated by any admissible evidence, need not be accepted as true.” *Roman v. State*, 125 Idaho 644, 873 P.2d 898 (Ct. App. 1994); *Drapeau v. State*, 103 Idaho 612, 617, 651 P.2d 546, 551 (Ct.App.1982). If the allegations fail to frame a genuine issue of material fact, or fail to establish all the necessary *prima facie* elements of a claim for relief, the court “may indicate to the parties its intention to dismiss the application and its reasons for so doing.” I.C. § 19-4906(b); I.C.R. 57(c); *Roman, supra*; *Parrott*, 117 Idaho 272, 787 P.2d 258 (1990). However, if the application raises a material issue of fact, the district court must conduct an evidentiary hearing and make specific findings of fact on each such issue. I.C. § 19-4907(a); *Martinez v. State*, 125 Idaho 844, 875 P.2d 941 (Ct. App. 1994).

Analysis

The issue of ineffective assistance of counsel is properly raised in a post-conviction setting. See *Mathews v. State*, 122 Idaho 801, 839 P.2d 1215, 1219 (S. Ct. 1992) (citing *Kraft v. State*, 100 Idaho 671, 674, 603 P.2d 1005, 1008 (1979)). To prevail on a claim of ineffective assistance, a petitioner must overcome the strong presumption that counsel’s performance was adequate by demonstrating “that counsel’s representation did not meet objective standards of competence.” *Roman*, 125 Idaho at 648-49, 873 P.2d at 902-03. Just because a petitioner claims “ineffective assistance of counsel,” he or she “is not automatically entitled to an evidentiary hearing.” *Mata v. State*, 124 Idaho 588, 592, 861 P.2d 1253, 1257 (Ct. App. 1993). “Like a civil litigant resisting a motion for summary judgment, an applicant opposing summary dismissal under I.C. § 19-4906,

must present evidence to support every controverted element of the claim for relief.” *Id.*, citing *Griffith v. State*, 121 Idaho 371, 825 P.2d 94 (Ct.App.1992).

Petitioner alleges that he specifically questioned his counsel as to whether a guilty plea or a conviction would result in him being deported or would result in his losing the ability to apply for United States citizenship and that his counsel advised him on both questions that it would not. The Petitioner argues that he would not have pled guilty but for the assurances of counsel that his guilty plea would not result in his being deported or losing his opportunity to apply for United States citizenship.

Claims alleging ineffective assistance of counsel are evaluated under the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Under this test, the petitioner must not only demonstrate that counsel’s performance was deficient, but must also show that the deficient performance was prejudicial. *Id.*, 466 U.S. at 687-88, 104 S.Ct. at 2064-65. To establish deficient performance, the applicant must prove that counsel’s representation fell below an objective standard of reasonableness. *Id.*

The United States Supreme Court has recently reviewed whether in the context of criminal plea negotiations advice regarding deportation falls under the ambit of the Sixth Amendment right to counsel. *Padilla v. Kentucky*, 559 US ___, 130 S.Ct. 1473, 1482 (2010). The Court gave a brief history of federal immigration law and discussed the interconnectedness of a decision plea negotiations and the defendant’s concern for his immigration status. *Id.* at 1478–80. The Court held

When the law is not succinct and straightforward, a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences.

Id. at 1483. Accepting the Petitioner’s allegations as true, a direct representation that his pending criminal charges would have no risk of adverse immigration consequences

would constitute representation below an objective standard of reasonableness under *Padilla*.

The second prong of the Strickland test is to establish that the allegedly deficient performance was prejudicial. *Strickland*, 466 U.S. at 687-88, 104 S.Ct. at 2064-65. To prove prejudice, the applicant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.*, at 694; *Parrott*, 117 Idaho at 274-75, 787 P.2d at 260-62. This latter "prejudice" requirement focuses on whether counsel's ineffective performance impacted the outcome of the case. *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370-71 (1985); *Griffith v. State*, 121 Idaho 371, 825 P.2d 94 (Ct.App.1992). In order to avoid summary dismissal, Petitioner must allege sufficient facts under both parts of the test. *Martinez v. State*, 125 Idaho 844, 875 P.2d 941 (Ct. App. 1994).

The Petitioner asserts that but for his counsel's advise he would not have pled guilty and therefore he was prejudiced such that he should be allowed to withdraw his guilty plea and proceed to trial. When taking a guilty plea, it is the Court's practice to ask defendants the following question while the defendant is under oath:

Do you understand that if you are not a citizen of the United States, your plea of guilty to a felony or even a misdemeanor may result in deportation, inability to obtain legal status or denial of an application for United States citizenship?

The record reflects that the Petitioner was sworn and examined by the Court and that the Court accepted the Petitioner's guilty plea. In order for the Court to accept the Petitioner's guilty plea the Petitioner would have had to answer that question in the affirmative. The Court finds that the Petitioner was advised by the Court of the consequences of his guilty plea on his immigration status. Therefore, even accepting the Petitioner's allegations as true, the Court finds that the trial counsel's deficient

performance was remedied by the Court. The Court finds that the Petitioner was not prejudiced by his counsel's alleged failure as the Petitioner did enter a guilty plea after being informed by the Court of the potential consequence of his guilty plea on his immigration status. When it is asserted that a Defendant's voluntary plea of guilty has not in fact been knowingly, voluntarily or intelligently given, the plea should be set aside. However, the mere assertion that the plea was not so given because of ineffective assistance of counsel is not sufficient, standing alone, to set aside a plea of guilty. Even where defense counsel is asserted to not have properly advised a Defendant of the impacts of his plea, the fact that the Court conducted an appropriate examination under I.C.R. 11 constitutes a prima facie showing that the plea has been knowingly and voluntarily given. *State v. Detwiler*, 115 Idaho 443, 767 P.2d 286 (Ct. App. 1989).

Further, in making a determination as to whether a plea is entered voluntarily, knowingly, and intelligently, the entire record is looked to including the action of the trial court in taking the plea. *State v. Carrasco*, 117 Idaho 295, 787 P.2d 281 (1990); *State v. Wilde*, 104 Idaho 461, 660 P.2d 73 (Ct. App. 1983); *State v. Curtis*, 103 Idaho 557, 650 P.2d (Ct. App. 1982).; *State v. Coutts*, 101 Idaho 110, 609 P.2d 642 (1980); *State v. Colyer*, 98 Idaho 32, 557 P.2d 626 (1976).

In this case, the Court questioned the Defendant under oath at length and advised him fully of the consequences of his plea including the fact he could be deported and lose the opportunity for U.S. citizenship. There is simply no factual support for the Defendant's assertion of ignorance of the pleas impact on his U.S. residency or future opportunities to apply for citizenship.

Conclusion

The Court has evaluated the Petitioner's claim and finds that Petitioner has not made a showing of "material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." I.C. § 19-4901(a)(4). The Petitioner has failed to establish prejudice as a result of his counsel's deficient performance even if the Court accepts as true the Defendant's assertion. Accordingly, summary dismissal is appropriate.

The Petitioner is hereby provided with notice of this Court's intention to **SUMMARILY DISMISS** his claim of ineffective assistance of counsel asserted in his petition. However, Petitioner, with the help of counsel has thirty (30) days from receipt of this order to file a response to the proposed dismissal, if any response is warranted. If no response is filed within the stated time period, the Court will dismiss the claim as stated above without further notice or argument.

SO ORDERED AND DATED this 2nd day of ~~October~~ ^{November}, 2010.


MIKE WETHERELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of November, 2010, I mailed (served)
a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

J. DAVID NAVARRO
Clerk of the District Court

By: 
Deputy Court Clerk

NO. 9:49 FILED
A.M. _____ P.M. _____

NOV 24 2010

J. DAVID NAVARRO, Clerk
By CARLY LATIMORE
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Tessie Buttram
Deputy Prosecuting Attorney
Idaho State Bar No. 6032
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

Case No. CV PC 10 20419

**MOTION FOR WAIVER OF
ATTORNEY/CLIENT
PRIVILEGE**

COMES NOW, Tessie Buttram, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and moves this Court for its Order waiving the attorney/client privilege for the reason stated below.

The Petitioner HASAN ICANOVIC has filed a UPCA Petition in this case. The Petitioner raises an ineffective assistance of counsel claim or claims. The State cannot explore this issue and meaningfully respond to this

MOTION FOR WAIVER OF ATTORNEY/CLIENT PRIVILEGE (WEAKLEY) -

PAGE 1

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K/S

Petition without access to information and the ability to speak with handling trial counsel, which is subject to the attorney/client privilege. *See* Evidence Rules 502 and 513. Therefore, the State requests that this Court find that the Petitioner has waived the attorney/client privilege for purposes of these post-conviction proceedings, as to all information held by Jared Martens, which is relevant, or which may lead to evidence relevant to the Petitioner's claim of ineffective assistance of counsel.

It is the State's belief that trial counsel would prefer to have an Order from the Court waiving the attorney-client privilege before trial counsel will share privileged information contained in those files.

DATED this 15 day of November 2010.

GREG H. BOWER

Ada County Prosecuting Attorney

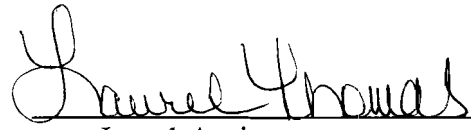
A handwritten signature in black ink, appearing to read 'Tessie Buttram', is written over a horizontal line.

By: Tessie Buttram
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of November 2010, I caused to be served, a true and correct copy of the foregoing Motion for Waiver of Attorney/Client Privilege upon the individual(s) named below in the manner noted:
Name and address: Megan Herrett, Ada County Public Defender's Office, 200 W. Front St. Rm. 1107, Boise, ID 83702

- ☐ *By depositing copies of the same in the United States mail, postage prepaid, first class.*
- ☒ *By depositing copies of the same in the Interdepartmental Mail.*
- ☐ *By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- ☐ *By faxing copies of the same to said attorney(s) at the facsimile number:*



Legal Assistant

RECEIVED

NOV 24 2010

Ada County Clerk

GREG H. BOWER

Ada County Prosecuting Attorney

NOV 29 2010

J. [unclear] [unclear] Clerk
CLERK OF DISTRICT COURT

Tessie Buttram

Deputy Prosecuting Attorney

Idaho State Bar No. 6032

200 West Front Street, Room 3191

Boise, Idaho 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

Case No. CV PC 10 20419

**ORDER FOR WAIVER OF
ATTORNEY/CLIENT
PRIVILEGE**

The Court having heard the motion heretofore made in the above proceedings of HASAN ICANOVIC vs. The State of Idaho, by **GREG H. BOWER**, Ada County Prosecuting Attorney, and the Court being fully advised in the premises; *

IT IS HEREBY ORDERED that the attorney/client privilege is waived, as to all information held by Jared Martens concerning Petitioner's claim of ineffective assistance of counsel in this case only.

DATED this 29 day of November 2010.



S. D. Judge

* and the attorney for the petitioner having indicated in chambers that she does not object to the motion. (GDC)

ORDER FOR WAIVER OF ATTORNEY/CLIENT PRIVILEGE (ICANOVIC), Page 1

000026

NO. 1017 FILED
A.M. _____ P.M. _____

DEC 02 2010

J. DAVID NAVARRO, Clerk
By E. HOLMES
DEPUTY

ADA COUNTY PUBLIC DEFENDER
Attorneys for Petitioner

MEGAN HERRETT, ISB #7003
Deputy Public Defender
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2010-20419

PETITIONER'S RESPONSE TO
NOTICE OF INTENT TO
SUMMARILY DISMISS PETITION
FOR POST CONVICTION RELIEF

COMES NOW, HASAN ICANOVIC, Petitioner above-named, by and through his attorney, MEGAN HERRETT, and files this Response to Notice of Intent to Summarily Dismiss Petition for Post Conviction Relief.

I. A REVIEW OF *PADILLA V. KENTUCKY*

The United States Supreme Court recently visited the issue of whether counsel engaged in deficient performance by failing to advise his client of the immigration consequences of his guilty plea in a criminal matter. *Padilla v. Kentucky*, 559 U.S. ___, 130 S.Ct. 1473, (2010). The defendant in *Padilla* was a lawful permanent resident of the United States for more than 40 years

when he pleaded guilty to a drug offense and subsequently faced deportation as a consequence. *Id.* at 1477. Padilla alleged that his trial counsel failed to advise him of the immigration consequences of his plea and also affirmatively represented to him that he did not need to be concerned about any detrimental immigration consequences since he had been in the United States for so long. *Id.* at 1478. Padilla claimed that but-for this erroneous advice from his attorney, he would have insisted on proceeding to trial. *Id.*

The Court applied the deficiency prong of *Strickland*'s ineffective assistance of counsel test and concluded that "counsel must inform her client whether his plea carries a risk of deportation." *Id.* at 1486. While acknowledging that immigration law is complex, the Court stated, "[w]hen the law is not succinct and straightforward . . ., a criminal defense attorney need do no more than advise a noncitizen client that pending criminal charges may carry a risk of adverse immigration consequences. But when the deportation consequence is truly clear . . . the duty to give correct advice is equally clear." *Id.* at 1483. In finding that Padilla's counsel was deficient in his performance under the first prong of *Strickland*, the Court found that, upon review of 8 U.S.C. § 1227(a)(2)(B)(i), his attorney could have easily determined that his plea would make him eligible for deportation, that his deportation was presumptively mandatory, and that the advice given was incorrect. *Id.* The Court then remanded the case to the Kentucky courts for determination of the prejudice prong of *Strickland*. *Id.* at 1483-1484.

II. ISSUES PRESENTED FOR REVIEW

- A) Are the consequences for pleading guilty to a charge of Felony Domestic Battery clear?
- B) Did the Court's notification to Petitioner that his plea of guilty *may* result in deportation cure Mr. Martens' erroneous advice?

III. ARGUMENT

A) The Deportation Consequences For A Felony Domestic Battery Charge Are Clear

i) The Charge To Which The Petitioner Pled Guilty To Constitutes A Deportable Offense As An Aggravated Felony

In the present case, the Petitioner entered a guilty plea to the sole count contained in the Amended Information: DOMESTIC VIOLENCE, FELONY, Idaho Code § 18-903, 918(2). The Amended Information alleged:

That the Defendant, HASAN ICANOVIC, on or about the 11th day of May 2009, in the County of Ada, State of Idaho, did willfully and unlawfully use force and/or violence upon the person of Sanela Mehmedovic by pushing Sanela Mehmedovic to the ground and by committing said battery, did inflict a traumatic injury upon the person of Sanela Mehmedovic, to-wit: a bruised lip, and where Sanela Mehmedovic and the Defendant are household members.

The Immigration and Nationality Act is codified in different sections of Title 8 of the United States Code. Title 8, Section 1227 delineates the different classes of aliens who shall be removed from the United States upon the happening of one of the designated events. Specifically, 8 U.S.C. § 1227(a)(2)(A)(iii) designates that any alien who is convicted of an aggravated felony at any time after admission is deportable. The term “aggravated felony” is defined in 8 U.S.C.A. § 1101 as, “a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment is at least one year.” The term “crime of violence” is defined as:

(a) an offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C.A. § 16.

In the present case, the Petitioner was charged with unlawfully using force and/or violence against another person, and in doing so, caused a traumatic injury. Idaho Code § 18-918(1)(b) defines “traumatic injury” as “a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by *physical force*.” (Emphasis added). This charge carried a penalty of up to ten (10) years in prison. The charge fit the definition of “crime of violence” and therefore constituted an aggravated felony for immigration purposes. Thus, the Petitioner was subject to deportation under 8 U.S.C. 1227(a)(2)(A)(iii). *See also INS v. St. Cyr*, 121 S.Ct. at 2293 (referring to deportation of aggravated felons as “certain”); *Zhang v. United States*, 506 F.3d 162, 167 (2nd Cir. 2007) (“deportation of aggravated felons is now automatic and non-discretionary”); *People v. Argueta*, 46 A.D.3d 46, 50, 844 N.Y.S.2d 63 (2nd Dept. 2007) (“deportation [is] mandatory upon conviction of an aggravated felony”).

Just as in *Padilla*, the terms of the relevant immigration statute are “succinct, clear, and explicit” in defining the deportation consequences for this offense. Mr. Martens could have easily determined that a guilty plea would make the Petitioner eligible for deportation simply by reading the text of the statute and, therefore, he had a duty to give the Petitioner accurate advice regarding the immigration consequences of his guilty plea.

ii) **The Charge To Which The Petitioner Pled Guilty To Constitutes a Deportable Offense As a Crime of Domestic Violence**

In addition to declaring an alien convicted of an aggravated felony as deportable, Title 8, Section 1227 also addresses immigration consequences for crimes of domestic violence convictions. Specifically, 8 U.S.C. § 1227(a)(2)(E)(i) designates that:

Any alien who at any time after admission is convicted of a crime of domestic violence...is deportable. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in section 16 of Title 18) against a person committed by a current or former spouse of the person, by an

individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

8 U.S.C § 1227(a)(2)(E)(i).

In the present case, the Petitioner was charged with unlawfully using force and/or violence, by pushing his household member. "Household member" is defined in Idaho Code § 18-918(1) as "a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom a person is cohabiting, whether or not they have been married or have held themselves out to be husband and wife." The charge fit the "crime of violence" definition under both subsections (a) and (b) of 18 U.S.C.A. §16 as well as the "crime of domestic violence" definition. Therefore, the charge constituted a "crime of domestic violence" for immigration purposes and the Petitioner was subject to deportation pursuant to 8 U.S.C. 1227(a)(2)(E)(i).

Again, Mr. Martens could have easily determined, after a review of the statutory text, that a guilty plea would make the Petitioner deportable and he therefore had a duty to give accurate advice regarding the immigration consequences of his guilty plea.

B) Because The Deportation Consequences of Pleading Guilty to a Felony Domestic Battery Are Clear, The Court's Notification To The Petitioner That His Guilty Plea May Result In Deportation Did Not Cure Mr. Martens' Erroneous Advice.

Mr. Martens had a duty to give the Petitioner correct advice regarding the clear deportation consequences of his guilty plea to the charge of Felony Domestic Violence. Because the deportation consequences were "succinct, clear, and explicit," Mr. Martens gave affirmative and erroneous advice when he told the Petitioner that his guilty plea would not result in

deportation or the inability to apply for United States citizenship. Additionally, because the deportation consequences were clear, Mr. Martens' performance would have also been deficient if he had told the Petitioner that his guilty plea *may* carry a risk of adverse immigration consequences; that advice would only be sufficient under *Padilla* if the immigration consequences of the guilty plea were unclear.

In addressing the prejudice prong of *Strickland* in the Court's Notice of Intent to Summarily Dismiss Petition for Post Conviction Relief, the Court holds that even assuming trial counsel's deficient performance to be true, it was remedied by the Court's plea colloquy and therefore, the Petitioner suffered no prejudice. Specifically, the Court noted that it is routine to ask the defendant the following question:

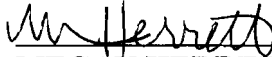
Do you understand that if you are not a citizen of the United States, your plea of guilty to a felony or even a misdemeanor *may* result in deportation, inability to obtain legal status or denial of an application for United States citizenship?
(Emphasis added).

The Court's question would arguably only remedy trial counsel's deficient performance if the deportation consequences were not clear. However, where the deportation consequences were clear and Mr. Martens failed in his duty to give accurate advice, the Court's advisory does not cure the deficiency by also inadequately advising the Petitioner that his plea *may* have deportation consequences. *See People v. Garcia*, 29 Misc.3d 756, 907 N.Y.S.2d 398, 407 (“[w]here, as here, defendant is found in fact to have been misled by bad advice from a so-called retained specialist and by a lack of advice from his defense attorney, the Court's general warning will not automatically cure counsel's failure nor erase the consequent prejudice”). Therefore, any prejudice that the Petitioner suffered was not remedied.

IV. CONCLUSION

The attested allegations contained in the Petition for Post Conviction Relief are un rebutted and present a colorable claim as to ineffective assistance of counsel. Counsel's affirmative and erroneous advice coupled with the Court's inadequate notification of possible immigration consequences failed to provide the Petitioner with the basis to make an informed plea and thus, the prejudice suffered was not remedied. Petitioner requests this Court to enter an ORDER vacating the plea of guilty and the judgment of conviction, and ultimately grant him a new trial.

DATED, this 2nd day of December 2010.

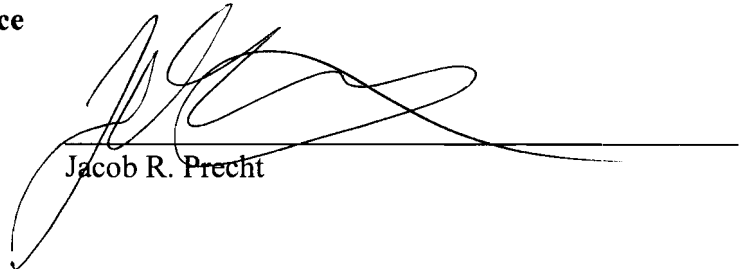


MEGAN HERRETT
Attorney for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on this 2 day of December 2010, I mailed (served) a true and correct copy of the within instrument to:

**TESSIE A. BUTTRAM
Ada County Prosecutor's Office
Interdepartmental Mail**



Jacob R. Precht

FILED
Wednesday, December 08, 2010 at 10:47 AM
J. DAVID NAVARRO, CLERK OF THE COURT
BY: DIANE M. OATMAN
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,
Petitioner,
vs.
STATE OF IDAHO,
Defendant.


Case No. CV-PC-2010-20419

NOTICE OF HEARING

PLEASE TAKE NOTICE that the Honorable Mike Wetherell,
District Judge, has set this matter for a Post Conviction Relief
Hearing on JANUARY 19, 2011 @ 10:00 AM, in the Ada County
Courthouse, 200 West Front Street, Boise, Idaho.

Dated this 8th day of December, 2010.

J. DAVID NAVARRO
Clerk of the District Court

By: 
Deputy

Cc: ADA COUNTY PROSEUTOR
INTERDEPARTMENTAL MAIL

ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

NOTICE OF HEARING

000035

DEC 08 2010

J. DAVID NAVARRO, Clerk
By DIANE M. OATMAN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,)	
IDOC NO. 93756)	
)	
Petitioner,)	
vs.	)	Case No. CVPC1020419
)	
STATE OF IDAHO,	)	ORDER TO TRANSPORT
)	
Respondent.)	
_____)	

It appearing that the above-named Petitioner is in the custody of the Idaho State Board of Correction, and that it is necessary that he be brought before this Court on JANUARY 19, 2011 AT 10:00 A.M.

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho State Board of Correction release the said Petitioner to the Ada County Sheriff

ORDER TO TRANSPORT

4/1/11

for the purpose of the aforementioned appearance and retake him into custody from the Sheriff upon his return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: December 8, 2010


MIKE WETHERELL
District Judge

ORDER TO TRANSPORT

000037

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of December, 2010,
I Mailed (served) a true and correct copy of the within
instrument to:

DEPARTMENT OF CORRECTIONS
Central Records
FAXED

Ada County Jail
Transport
Via Clerk's Office

J. DAVID NAVARRO
Clerk of the District Court

By: 
Deputy Court Clerk

NO. _____
FILED _____
A.M. _____ P.M. 1:25

DEC 21 2010

J. DAVID NAVARRO, Clerk
By **CARLY LATIMORE**
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Tessie Buttram
Deputy Prosecuting Attorney
Idaho State Bar No. 6032
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

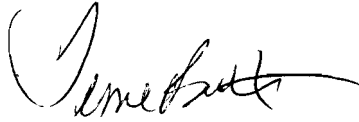
HASAN ICANOVIC)	
)	
Petitioner,	)	Case No. CV PC 10 20419
)	
vs.	)	MOTION TO EXTEND TIME
)	
THE STATE OF IDAHO,)	
)	
Respondent.)	

COMES NOW, Tessie Buttram, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and moves this Court for an Order Extending Time for the reason that State has not received the Plea Colloquy transcript that was ordered on November 30, 2010. The State needs this transcript in order to respond accurately and sufficiently to the Petition.

DATED this 21 day of December 2010.

GREG H. BOWER

Ada County Prosecuting Attorney



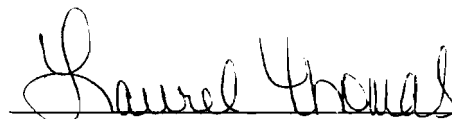
By: Tessie Buttram
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of December 2010, I caused to be served, a true and correct copy of the foregoing Motion to Extend Time upon the individual(s) named below in the manner noted:

Name and address: Megan Herrett, Ada County Public Defender's Office, 200 W. Front St. Rm. 1107, Boise, ID 83702

- ☐ *By depositing copies of the same in the United States mail, postage prepaid, first class.*
- ☒ *By depositing copies of the same in the Interdepartmental Mail.*
- ☐ *By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- ☐ *By faxing copies of the same to said attorney(s) at the facsimile number:*



Legal Assistant

DEC 21 2010

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Tessie A. Buttram
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise Idaho 83702
Telephone: (208) 287-7700


IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2009-008538
vs.)	
	)	MOTION FOR
HASAN ICANOVIC,	)	PREPARATION OF
	)	TRANSCRIPT
Defendant.)	
)	
)	
)	

COMES NOW, Tessie A. Buttram, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and moves this Court for its order for preparation of transcript of the Entry of Plea held on the 25th day of June 2009.

SUBMITTED THIS 21 day of December 2010,

GREG H. BOWER
Ada County Prosecuting Attorney

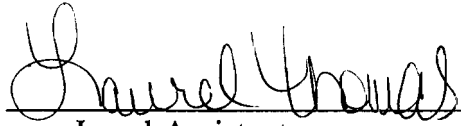

By: Tessie A. Buttram
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of December 2010, I caused to be served, a true and correct copy of the foregoing Motion upon the individual(s) named below in the manner noted:

Name and address: Megan Herrett, Ada County Public Defender's Office, 200 W. Front St. Rm. 1107, Boise, ID 83702

- ☐ *By depositing copies of the same in the United States mail, postage prepaid, first class.*
- ☒ *By depositing copies of the same in the Interdepartmental Mail.*
- ☐ *By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.*
- ☐ *By faxing copies of the same to said attorney(s) at the facsimile number:*



Legal Assistant

RECEIVED
DEC 21 2010
Ada County Clerk

NO
FILED
A.M.
4:30

DEC 22 2010

J. DAVID MUYARRO, Clerk
By DIANE L. GATWAIN

GREG H. BOWER
Ada County Prosecuting Attorney

Tessie Buttram
Deputy Prosecuting Attorney
Idaho State Bar No. 6032
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC

Petitioner,

vs.

THE STATE OF IDAHO,

Respondent.

Case No. CV PC 10 20419

ORDER TO EXTEND TIME

The above entitled matter having come before this Court and good cause appearing;

IT IS HEREBY ORDERED that time for the State's response is extended to Jan 14, 2011. (GAC)

DATED this 22nd day of Dec, 2010. (GAC)

[Signature]
Senior Judge

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front St., Ste. 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

JAN 21 2011

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASSAN ICANOVIC,)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2010-20419
)	
vs.)	
)	
STATE OF IDAHO,	)	NOTICE OF APPEAL
)	
Plaintiff-Respondent.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, GREG BOWER, ADA COUNTY
PROSECUTOR, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the final Decision and Order entered in the above-entitled action on the 19th day of January, 2011, the Honorable Mike Wetherell, District Judge presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a), I.A.R.
3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

(a) Did the district court err in dismissing the appellant's Petition for Post Conviction Relief?

NOTICE OF APPEAL, Page 1

000044

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).
5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:
 - (a) Hearing held: January 19, 2011
Court Reporter: N. Omsberg
Estimated pages: less than 50
6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):
 - (a) Any exhibits, affidavits, objections, responses, briefs or memorandums, including all attachments or copies of transcripts, filed or lodged, by the state, the appellate, or the court in support of, or in opposition to, the dismissal of the Post-Conviction Petition.
7. I certify:
 - (a) That a copy of this Notice of Appeal has been served on the Court Reporter, N. Omsberg.
 - (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
 - (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
 - (c) Ada County will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e);

(d) That service has been made upon all parties
required to be served pursuant to I.A.R 20.

DATED this 20th day of January, 2011.



ANTHONY R. GEDDES
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on the 20th day of January, 2011, I
mailed true and correct copies of the foregoing, NOTICE OF APPEAL
to:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. BOX 83720
BOISE, ID 83720-0010

N. OMSBERG, HONORABLE JUDGE WETHERELL'S COURT REPORTER



Stephanie Martinez

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front St., Ste. 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

RECEIVED
JAN 21 2011
ADA COUNTY

NO. _____
AM 7:45

JAN 25 2011

CHRISTOPHER L. FION, Clerk
By COURTNEY
County


IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,)	
)	
Petitioner-Appellant,	)	Case No. CV-PC-2010-20419
)	
vs.)	
)	
STATE OF IDAHO,	)	ORDER APPOINTING STATE
	)	APPELLATE PUBLIC DEFENDER
Plaintiff-Respondent.	)	ON DIRECT APPEAL
)	

The above-named Petitioner-Appellant, HASAN ICANOVIC, being indigent and having heretofore been represented by the Ada County Public Defender's Office in the District Court, and said Defendant having elected to pursue a direct appeal in the above-entitled matter;

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Idaho State Appellate Public Defender is appointed to represent the above named Petitioner-Appellant, HASAN ICANOVIC, in all matters pertaining to the direct appeal.

DATED This 24th day of January, 2011.


MIKE WETHERELL
District Judge

ORDER APPOINTING STATE APPELLATE
PUBLIC DEFENDER ON DIRECT APPEAL

000047

4:50

A _____, Clerk.
By _____, Deputy.

)

)

(

)

)

1

(

Yt

MIKE WETHERELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of February 2011,

I mailed(served) a true and correct copy of the within
instrument to:

ADA COUNTY PROSECUTOR
INTERDEPARTMENTAL MAIL

ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

Christopher Rich
Clerk of the District Court

By 
Deputy Court Clerk

TO: CLERK OF THE COURT
IDAHO SUPREME COURT
451 WEST STATE STREET
BOISE, IDAHO 83702

NO. _____ FILED _____
A.M. 8:00 P.M.

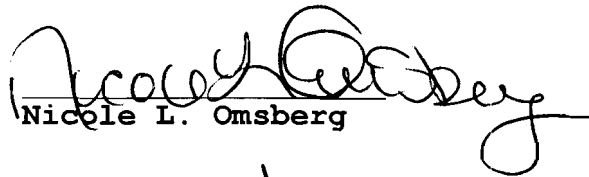
APR 07 2011

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

HASAN ICANOVIC,)
Plaintiff-Respondent,) Supreme Court No. 38477
v.)
STATE OF IDAHO,) Case No. CR-2010-20419
Defendant-Appellant.)

NOTICE OF TRANSCRIPT FILED

Notice is hereby given that on March 7, 2011, I
filed a transcript of 43 pages in length for the
above-referenced appeal with the District Court
Clerk of the County of Ada in the Fourth Judicial
District.


Nicole L. Omsberg

3-7-11
Date

HEARINGS: 1/19/11.
PDF SENT 3/6/11.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 38477

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

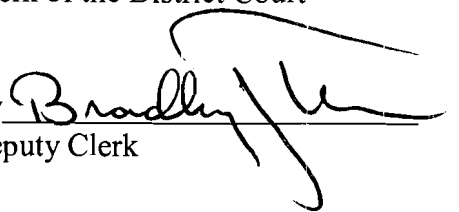
That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Transcript of Guilty Plea Hearing Held June 25, 2009, Boise, Idaho, filed January 19, 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 7th day of April, 2011.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE OF EXHIBITS

000051

EXHIBIT LIST

Mike Wetherell / Diane Dattner
Judge Clerk

Page 1 of 1 Pgs.

DATE Jan 19, 2011

TYPE OF HEARING Post Conviction

CASE NO. CNPC 10-20419

Hasan Candovic

Anthony Geddes

Plaintiff

Attorney(s)

VS.

State of Idaho

Jessie Buttram

Defendant

Attorney(s)

[illegible]

~~000052~~

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 38477

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

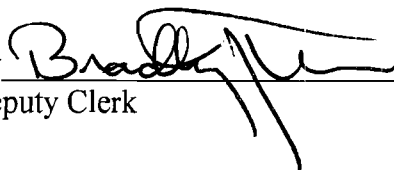
LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

CHRISTOPHER D. RICH
Clerk of the District Court

Date of Service: APR 07 2011

By 
Deputy Clerk

CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HASAN ICANOVIC,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

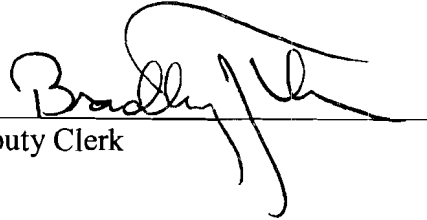
Supreme Court Case No. 38477

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 21st day of January, 2011.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE TO RECORD

000054